



WATERLOG

NFIP NEWSLETTER-FLOOD INSURANCE NEWS IN IDAHO

WINTER 2007

Liability For Water Control Structure Failure Due To Flooding

By Scott Van Hoff, CFM

Idaho has a long history of flood events that have included the failure of a water control structure of some type. These water control structures range from levees, banks, and dams, to canals and head gates. A question I have been asked with increased frequency in recent years is, "who is responsible for the damage caused by the failure of this structure?"

This is an obvious legal question best addressed by a qualified attorney. While I am not trained to answer such legal questions, I have found some valuable resources that address this question of liability when a levee, dam or other such structure fails and causes damage.

I highly recommend that anyone with an interest in this topic read the paper "Liability for water control structure failure due to flooding" by Edward A. Thomas, Esq. I believe this to be a very good resource for the legal professional as well as the rest of us who desire a plain English explanation of a complex issue. I have provided the link below that will connect you to this document which is found on the website of the Association of State Flood Plain Managers (ASFPM).

http://www.floods.org/PDF/NAI_Liability_Failure_Facilities_0906.pdf

Floodplain Development Permits vs. Stream Channel Permits

By Scott Van Hoff, CFM

Have you ever heard a person say, "I have my permits for from the Army Corps of Engineers and IDWR so I must be approved and ready to go for my bridge project, right?" **WRONG!**

Or maybe you have heard this one, "I got my floodplain review and permit from the Corps of Engineers." Wrong again!

See Floodplain on page 2



Waterlog Returns

By Scott Van Hoff CFM

Many of you may remember receiving this quarterly newsletter in the mail a couple of years ago. This publication was discontinued after the Spring 2004 issue due to budget cuts. I am happy to announce the return of Waterlog as a digital publication. Since there is no longer a size limitation caused by printing concerns, I hope to make this a more useful publication with more detailed information, reference material, and web links to assist local floodplain managers, surveyors, engineers and anyone else with an interest in floodplain management and the National Flood Insurance Program.

If there are any specific topics or regulatory issues you would like to see addressed in this publication in future issues, please contact any member of the floodplain management staff at IDWR with your suggestions.

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Floodplain from front page

Neither the USACE 404 permit nor a Stream Channel Alteration Permit from Idaho Department of Water Resources is the same as a floodplain development permit from the local government. Only the local government (city or county) in Idaho has the authority to issue floodplain development permits in order to demonstrate compliance with the National Flood Insurance Program (NFIP).

There are more than 160 communities in Idaho that have mapped flood hazards and participate in the National Flood Insurance Program. These communities applied to the Federal Emergency Management Agency (FEMA) for participation in the NFIP and were admitted by signing a mutual agreement. In short, the agreement says FEMA will make flood insurance available for all residents of the community as long as the community passes a flood damage prevention ordinance *and* enforces that ordinance. Each participating community must meet or exceed FEMA's minimum standards. The first of those minimum standards is *Permits are required for all development in the Special Flood Hazard Area*.

Development is defined as:

44 CFR 59. Definitions: "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

This is not to say that permits from USACE, IDWR, or other agencies are not necessary. The minimum standards of the NFIP for all participating communities states that the community should *not* issue a flood plain development permit *until all required state and federal permits are obtained* (44CFR 60.3(a)(2)). The suggested procedure for obtaining permits for any planned development in a Special Flood Hazard Area is to first obtain all required permits from state and federal agencies (USACE, IDWR, IDL) and then obtain a floodplain development permit from the local community (city or county).

Failure to obtain a floodplain development permit from the local jurisdiction prior to beginning any development project in a mapped Special Flood Hazard Area may result in enforcement action against the local jurisdiction that may result in that community being suspended from the NFIP. When a community is suspended from the NFIP, flood insurance is no longer available to any residents of that community.

New Elevation Certificate Required Jan. 1, 2007

FEMA's new Elevation Certificate (EC) was approved for use, effective Feb. 13, 2006, through Feb. 28, 2009. The new form has been revised and now requires the certifier to provide the square footage of the enclosed area below the elevated floor and at least two photographs of the building, if the EC is being used to obtain flood insurance.

The new EC was phased in on a voluntary basis until Dec. 31, 2006. An electronic version of the form and instructions are available on the FEMA website. Elevations certified on or after January 1, 2007, *must* be submitted on the new form and *must* include photographs.

What's New?

- The format of the EC has been modified slightly to include all building description related items in Section A, dedicating Section C to building elevation information.
- The instructions of the new form have been modified to reflect the changes and to provide better guidance for completing the form.
- Two pages have been added for attaching two or more color photographs of the building. Photographs must be a minimum of 3" x 3" and may be digital or analog.

You can download the elevation certificate at FEMA's website at <http://www.fema.gov/business/nfip/forms.shtm>

WATERLOG

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FEMA Clarifies Policy on Mapping Areas Protected By Levees

Story from FEMA.gov

WASHINGTON, D.C. – The Department of Homeland Security's Federal Emergency Management Agency announced new guidance which provides communities additional time to gather data needed to assess the protective capabilities of levees while still allowing new Flood Insurance Rate Maps to be released on time.

On August 22, 2005, FEMA reiterated its commitment to consider levee construction, strength, ongoing maintenance and other factors during the agency's ongoing flood mapping modernization efforts. In 1986, through Section 65.10 of Title 44 of the Code of Federal Regulations, FEMA was directed to review levee accreditation criteria, determine the risk of flooding behind levees, and depict these flood risks on flood hazard maps.

"When levees fail, they fail catastrophically. The flooding may be much more intense and damaging than if the levee was not there," said David Maurstad, FEMA's Mitigation Director and Federal Insurance Administrator. "No levee system will provide full protection from floods. Levees are designed to provide a specific level of protection, and they can be overtopped

in larger flood events. People need to be aware of the risks they face living behind levees – including levees credited as providing protection from the one percent annual chance flood."

Many of the nation's levees were first put in place by farmers to protect agricultural areas from frequent flooding. Some date back as much as 150 years. But in that time, land use has changed and development has taken place where these farms were once located. And levees can decay over time. Accurate mapping of the risks of flooding behind levees depends on knowing the condition and level of protection the levees actually provide.

FEMA and the U.S. Army Corps of Engineers are working together to make sure that flood hazard maps clearly reflect the flood protection capabilities of levees, and that the maps accurately represent the flood risks posed to areas situated behind them. Levee owners – usually states, communities, or in some cases private individuals or organizations – are responsible for assuring that the levees they own are maintained to their design. In order to be considered creditable flood protection structures on FEMA's flood maps, levee owners must provide

documentation to show that the levee meets design, operation and maintenance standards for protection against the "one-percent-annual chance" flood.

If the levee meets the criteria, the map will show the area behind the levee as protected from the one-percent-annual chance flood and mapped as a moderate risk zone. But if it does not, the map will show the area as a high-risk zone, or Special Flood Hazard Area (SFHA), and most mortgage holders

ASFPM Annual Floodplain Managers Conference

Norfolk, Virginia – June 3rd-8th, 2007

~Throughout the week, 180 of the industry's experts will conduct plenary and concurrent sessions and share the state-of-the-art in techniques, programs, and resources to accomplish flood mitigation, watershed management, and other community goals. A three-day comprehensive exposition features the materials, equipment, accessories, and services vital to get the job done. Supplementary technical field tours and workshops provide in-depth training. Numerous networking activities offer additional opportunities to learn from each other.



<http://www.floods.org/Conferences,%20Calendar/norfolk.asp>

What is a Submit-To-Rate?

By Barbara McEvoy, CFM

Federal Emergency Management publication 480, [NFIP Floodplain Management Requirements Study Guide & Desk Reference](#), describes the Submit-to-rate process as follows: “[An] insurance agent’s rate tables do not cover cases where the building is two or more feet below the BFE. The agent must send the application to his or her company headquarters for a special, individualized rating. This procedure is known as submit to rate. Since a submit-to-rate policy often is an indicator of the property owner’s noncompliance with a community’s regulations, the community’s failure to enforce its regulations, or the result of a variance action these cases are forwarded to the appropriate FEMA Regional Office for investigation” (FEMA 480 p. 9-19). Submit to rate premiums on policies that are significantly below the BFE can be as high as \$25 per \$100 of coverage purchased.

In Idaho, FEMA Region X reviews the submit-to-rate and sends it on to the Idaho Department of Water Resources to be reviewed by the Na-

tional Flood Insurance Program State Coordinator. Once in the Coordinator’s office, he or a floodplain specialist reviews it for NFIP standards and possible Floodplain Ordinance violations. Every submit-to-rate that enters the department is reviewed and sent directly to the floodplain administrator of the community where the property is located. It is then up to the local official or floodplain administrator to take appropriate measures in order to bring the structure into compliance. The form letter that accompanies the submit-to-rate will have specific instructions about how to accomplish this. Once the administrator receives the letter, they have 30 days to reply with a plan of action to correct the violation or offer an explanation with documentation to show that the structure was

built compliant with the ordinance in place at the time of construction. These replies are then filed at the Department of Water Resources and sent back to FEMA Region X for any needed follow up or enforcement action.

The Special Flood Hazard Area is a high-risk development area attractive to homeowners and business communities. Although NFIP standards do not forbid construction in the floodplain, they do encourage safe practices that protect property. Having the lowest floor at or above BFE,

properly vented, and compliant with the community ordinance is the best way to avoid high insurance rates. Sub-grade crawlspace construction will always be rated as a “basement” but may not be a compliance issue as long as the community has inserted [FEMA Technical Bulletin 11-01](#) language into its Flood Hazard Mitigation ordinance.

The submit-to-rate serves many purposes, but its strongest reminder is that when

homes and offices are built in the floodplain they are subject to flood insurance premiums that can escalate in proportion to the risk of the buildings foundation and other properties. Many times, if the structure is not built to minimum standards, these premiums are very high. Many communities in Idaho have written higher standards into their Flood Hazard Mitigation ordinances in order to protect lives and properties of their citizens. The direct effects of these higher standards are a safer, cleaner, and affordable living experience in the Special Flood Hazard Area.



New cabin in the flood plain in Wallace, Idaho. (Photo by Scott Van Hoff)

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within that area will be required to purchase flood insurance.

Based on feedback from numerous communities, states and other stakeholders, FEMA learned that it may be difficult for levee owners to produce the required information because documentation is not always immediately available and, in some cases, additional assessment may be required. Inability to provide full documentation immediately does not mean that the levee no longer provides the level of protection to which it was designed. But neither does it mean that flood hazard maps can fully credit the levee with providing protection against the one-percent-annual-chance flood.

This week, FEMA announced that it clarified procedures and timelines for levee documentation, while keeping the map modernization effort on track. For eligible levees, levee owners have 24 months to gather information on the extent to which a levee meets current flood protection standards. In the interim, areas behind the levee are mapped as moderate risk areas, and the levee itself is noted to be a Provisionally Accredited Levee.

“The new guidance accommodates the needs of local officials, levee owners and the public – while still acknowledging and communicating flood risks,” Maurstad said. “It provides a realistic timeline for levee documentation and at the same time alerts the public to the levees’ provisional status and associated risks. The clarification provides a sound mechanism for dealing with levees under review. And it clearly indicates the continuing risk.

A note on the map will explain that the levee is only provisionally – temporarily – accredited. And all flood hazard maps contain a note for areas behind levees pointing out that levees can be overtopped and strongly encouraging flood insurance protection and adherence to evacuation procedures.”

The flood map modernization initiative is a five-year, \$1 billion effort to modernize and digitize the nation’s flood hazard maps. Communities use this information for land-use planning, floodplain management, and flood insurance rating purposes. The current goal is to map the areas where 92 percent of America’s population lives, covering 65 percent of the land area in the United States. The focus is on improving the flood hazard data level of detail in communities at greatest flood risk. The maps provide reliable, up-to-date flood data, using the latest mapping technology. The maps indicate areas at high risk of flooding, known as special flood hazard areas, as well as areas at low to moderate risk. In special flood hazard areas, flood insurance is a requirement for federally backed mortgages.

To learn more, visit: http://www.fema.gov/plan/prevent/fhm/lv_intro.shtm.

FEMA prepares the nation for all hazards and manages federal response and recovery efforts following any national incident. FEMA also initiates mitigation activities, trains first responders, works with state and local emergency managers, and manages the National Flood Insurance Program.

Scott Van Hoff Resigns as Idaho State Floodplain Coordinator

By Scott Van Hoff, CFM

After more than 10 years of state service and more than six years as the State Coordinator for the National Flood Insurance Program, I will be leaving Idaho Department of Water Resources as of February 28, 2007. I have accepted a position with the United States Geologic Survey in Boise. It has been my privilege to serve the needs of local governments in Idaho for the last six years. I have enjoyed working with many mayors, commissioners, local and state officials, federal employees, consultants, citizens and landowners over the years and have made many very good friends. I will continue to serve the needs of Idaho and I hope to get the chance to work with many of you again in my new role as the USGS Geospatial Liaison for the State of Idaho.